

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Souad Moussawi	Team: Team # 2	CCRB Case #: 200912585	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 08/01/2009 6:25 PM	Location of Incident: White Plains Road and East 226 Street	Precinct: 47	18 Mo. SOL 2/1/2011	EO SOL 2/1/2011	
Date/Time CV Reported Mon, 08/10/2009 12:01 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 08/13/2009 11:11 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Joseph Deck	08350	947736	047 PCT
2. POM Andrew Freeman	19103	947006	047 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Gabriel Rodriguez	11294	947418	047 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Joseph Deck	Abuse: PO Joseph Deck questioned § 87(2)(b)	
B.POM Joseph Deck	Force: PO Joseph Deck used physical force against § 87(2)(b)	
C.POM Andrew Freeman	Force: PO Andrew Freeman used physical force against § 87(2)(b)	
D.POM Joseph Deck	Abuse: PO Joseph Deck did not obtain medical treatment for § 87(2)(b)	

Case Summary

§ 87(2)(b) filed the following complaint with IAB on August 10, 2009 under log # 09-38944 (encl. 3A-B). The complaint was referred to the CCRB on August 13, 2009. On August 1, 2009, at approximately 5:00 p.m., § 87(2)(b) took a break from working at his § 87(2)(b) which is located on § 87(2)(b) § 87(2)(b) the Bronx. § 87(2)(b) was subsequently approached by PO Joseph Deck and PO Andrew Freeman. The following allegations resulted from the officers' actions:

Allegation A – Abuse of Authority: PO Joseph Deck questioned § 87(2)(b)

§ 87(2)(g)

Allegation B – Force: PO Andrew Freeman used physical force against § 87(2)(b)

Allegation C – Force: PO Joseph Deck used physical force against § 87(2)(b)

§ 87(2)(g)

Allegation D –Abuse of Authority: PO Joseph Deck did not obtain medical treatment for § 87(2)(b)

§ 87(2)(g)

This case was initially assigned to Investigator Suzanne Donnelly. Upon Investigator Donnelly's resignation, the case was reassigned to Investigator Souad Moussawi on March 23, 2010.

Results of Investigation

Civilian Statement(s)

Complainant: § 87(2)(b)

§ 87(2)(b) is a § 87(2)(b).

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on August 31, 2009 (encl. 4A-H). On August 1, 2009 at approximately 5:00 p.m., § 87(2)(b) walked to a store located on White Plains Road and East 225th Street and bought juice and a white Styrofoam cup filled with ice. He returned to the barber shop where he works and tasted the juice but did not like it, so he went back outside to pour it out. He only had the styrofoam cup in his hand. He was with his friend, § 87(2)(b) at this time. § 87(2)(b) poured the juice out on the sidewalk but kept the ice in the cup.

§ 87(2)(b) went to the garbage can toward the corner to dispose of the cup. At this point, he observed PO Joseph Deck and PO Andrew Freeman (who were identified via the investigation) talking to someone approximately 20 feet away. The officers turned their attention to § 87(2)(b). PO Deck asked what was in the cup and § 87(2)(b) responded ice. PO Deck approached § 87(2)(b) and § 87(2)(b) handed the cup to him. PO Deck handed the cup to PO Freeman, who smelled it and put it down on the ground. PO Deck then requested § 87(2)(b)'s identification. § 87(2)(b) questioned the officer and pointed out that he worked at the nearby barbershop and added that there was no reason the officers should want his identification. Nevertheless, he provided identification. Suddenly, PO Deck pushed § 87(2)(b) before § 87(2)(b) had the opportunity to hand PO Deck his identification. § 87(2)(b)'s identification fell to the ground.

§ 87(2)(b) did not lose his balance. PO Deck and PO Freeman were then joined by two officers working on foot in the vicinity, PO Gabriel Rodriguez (identified via the investigation) and PO4, an unidentified officer. PO Freeman held § 87(2)(b) in a headlock, (without restricting his breathing) and then threw him to the ground. § 87(2)(b) fell on the ground and officers put pressure on his back to turn him flat. One stepped on his knee and one stepped on his face. The officers yelled at § 87(2)(b) not to resist arrest, but § 87(2)(b) could not resist arrest in his position. One of the officers then handcuffed § 87(2)(b).

The arrest occurred outside a beauty store next to the barbershop; a woman (name unknown) who works at the beauty store came outside to see what was going on. § 87(2)(b) was still standing right there next to where this was taking place. The officers quickly placed § 87(2)(b) into a marked van because a crowd began forming.

In the van, § 87(2)(b) refused PO Deck's order to move to the row behind him. PO Deck got angry and pushed § 87(2)(b)'s head into the side window of the van, such that the left side of his face made contact with the window. Four to five officers then transported § 87(2)(b) to the 47th Precinct. During the transport, § 87(2)(b) yelled and screamed that he wanted to go to the doctor because his chest and head were hurting, but PO Deck repeatedly told him to "shut up."

At the 47th Precinct stationhouse, § 87(2)(b) again asked PO Deck for medical attention. PO Deck told § 87(2)(b) that he was being released shortly with a Desk Appearance Ticket. § 87(2)(b) said if that were the case, he would just go to the hospital himself after he was released. He signed a form refusing medical attention. However, he was not released with a DAT. He was issued a summons for an open container and was later removed to Central Booking.

§ 87(2)(b) sustained minor injuries as a result of the incident including a scratch to his ankle. He did not have any other visible injuries (at the time of the incident or at the time of his CCRB interview). He went to § 87(2)(b) Hospital on § 87(2)(b). § 87(2)(b) presented summons # § 87(2)(b) which was issued for an open container. The officer's name and tax number were illegible on the summons copy.

Witness: § 87(2)(b)
§ 87(2)(b) is a § 87(2)(b).

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on October 7, 2009 (encl. 4I-K). § 87(2)(b) is § 87(2)(b)'s coworker. On August 1, 2009, at approximately 6:30 p.m. § 87(2)(b) was at work with § 87(2)(b) at White Plains Road and East 225th Street in the Bronx. There were approximately ten customers in the store and two employees, but the two employees remained inside the barbershop and did not witness the incident.

§ 87(2)(b) and § 87(2)(b) left the barbershop. § 87(2)(b) thought they were going to the store to get a snack or possibly stop by § 87(2)(b)'s home, which is around the corner. § 87(2)(b) was gone for approximately a minute when a customer came inside the store and informed everyone that § 87(2)(b) was involved in an altercation with officers. § 87(2)(b) and the others inside the barbershop were unable to see this from inside. § 87(2)(b) and another employee, § 87(2)(b) ran outside to see what was going on.

When § 87(2)(b) came outside, he saw that § 87(2)(b) was lying down on the ground on his chest and face. A Hispanic officer had his knee on § 87(2)(b)'s back and was handcuffing him. § 87(2)(b) was not resisting or moving his body at all. The officers did not use any additional force against § 87(2)(b) at this time. There were approximately 10 officers on the scene, all in blue uniform, white and Hispanic. The remaining officers were standing around and making sure the civilians stayed back from where the arrest was taking place. A marked van arrived within three minutes and § 87(2)(b) was quickly placed inside and driven away.

Attempts to Contact Civilians

§ 87(2)(b) provided contact information for § 87(2)(b). A first please call letter was sent to § 87(2)(b) on September 11, 2009. Three calls were placed to § 87(2)(b) between September 25, 2009 and January 28, 2010. § 87(2)(b) stated that he was interested in providing a statement but consistently postponed scheduling an interview. The final call indicated that § 87(2)(b)'s telephone number was disconnected. To date, § 87(2)(b) has not contacted the undersigned investigator and the letters sent to him have not been returned to the CCRB.

NYPD Statement(s):

Subject Officer: PO JOSEPH DECK

- *PO Deck is a § 87(2)(b).*
- *On August 1, 2009, PO Deck worked a tour of 5:30 p.m. by 2:05 a.m. the following day and was assigned to an Impact foot post for the 47th Precinct. His partners that day were PO Rodriguez and PO Freeman, he was dressed in uniform, and he was not assigned to a vehicle.*

Memo Book

PO Deck's memo book is summarized as follows: "At 6:25 p.m., one male under, northeast corner of East 226th Street and White Plains Road."

CCRB Testimony

PO Joseph Deck was interviewed at the CCRB on January 5, 2010 (encl. 5E-I). On August 1, 2009 at approximately 6:25 p.m., PO Deck was with his partners and several other impact foot posts. The officers had just left the 47th Precinct stationhouse and they were headed to their respective foot posts in the area when PO Deck saw a man later identified as § 87(2)(b) walking in his direction on White Plains Road. At the time, PO Deck was with PO Rodriguez and PO Freeman, though there were several other impact officers also walking in the vicinity. PO Deck did not recognize § 87(2)(b) from prior interaction. PO Deck explained that in the areas of the incident, there are many establishments that sell alcohol in white foam cups, and this is a huge problem that the officers in the area have encountered.

PO Deck noticed that § 87(2)(b) was holding a white styrofoam cup in his hand. When PO Deck got within a couple of feet of § 87(2)(b) he detected a heavy odor of alcohol from § 87(2)(b)'s cup. There were other people in the area at this time, but PO Deck was not sure whether § 87(2)(b) was with any of them. PO Deck did not have any discussion with his partners regarding stopping § 87(2)(b) it was PO Deck's decision to stop § 87(2)(b).

PO Deck asked § 87(2)(b) what was in his cup two times, but § 87(2)(b) refused to tell him. He told PO Deck that he had no right to talk to him, told him to get out of here, and used profanity, though PO Deck could not recall specifically what § 87(2)(b) said. PO Deck then asked § 87(2)(b) if he could smell what was in his cup, and § 87(2)(b) said no and refused to

give it to PO Deck. PO Deck asked for § 87(2)(b)'s identification to issue him a summons for having an open container at least twice. § 87(2)(b) refused to provide it, stating that PO Deck had no right to ask for his identification. PO Deck observed that § 87(2)(b)'s eyes were bloodshot, and he smelled of alcohol. He was also unsteady on his feet.

When PO Deck asked for § 87(2)(b)'s identification again, § 87(2)(b) became aggressive and continued cursing, asking, "What the fuck is this for?" A large crowd of as many as 40 people gathered, as there were many people out because it was summertime, and people also were coming out of stores and barbershops. People in the crowd began yelling at the police, though no one seemed to get physically involved. At this point, § 87(2)(b) stepped very close to PO Deck and got right in his face, within a couple of inches. He told PO Deck, "I'll shut you the hell up." PO Deck feared for his safety, and he was also fearful of the crowd getting out of hand, so he made the decision to place § 87(2)(b) under arrest and take him back to the precinct before everything escalated.

PO Deck attempted to handcuff § 87(2)(b). He could not recall where he first touched § 87(2)(b) but § 87(2)(b) immediately resisted by pushing PO Deck away and flailing his arms to avoid being handcuffed. § 87(2)(b) resisted the entire time. PO Rodriguez, PO Freeman, and possibly another officer helped PO Deck to restrain § 87(2)(b). He could not recall the identity of the other officer, as there were several in the area en route to their posts. PO Deck could not describe the other officers' physical contact with § 87(2)(b). § 87(2)(b) was brought to the ground, but PO Deck could not recall how § 87(2)(b) landed on the ground. He also could not recall which officer actually handcuffed § 87(2)(b). The duration of the struggle was approximately 30 seconds.

The officers also went to the ground in the process, but PO Deck was not certain if any officer landed on § 87(2)(b). No officer ever stepped on § 87(2)(b) or placed him into a headlock. PO Deck noticed that § 87(2)(b) sustained a scrape to his knee. PO Deck was not sure if any officers sustained any injuries as a result of the incident. To his knowledge, there were no additional arrests made or summonses issued during this incident.

At some point, a sergeant arrived to verify the arrest. PO Deck could not recall the sergeant's name. A van that happened to be in the area came upon the scene and transported § 87(2)(b) to the precinct. PO Deck could not recall which officers were in the van; they were not impact, but they were from his command. PO Deck traveled to the precinct in the van with the officers and § 87(2)(b). At no point was § 87(2)(b)'s head pushed into the window or side of the van. At the stationhouse, PO Deck asked § 87(2)(b) several times if he wanted medical attention, but he verbally refused. § 87(2)(b) eventually calmed down at the stationhouse. His arrest was processed and he was also issued a summons for the open container.

Subject Officer: PO ANDREW FREEMAN

- *PO Freeman is a § 87(2)(b).*
- *On August 1, 2009, PO Freeman worked a tour of 5:30 p.m. by 2:05 a.m. the following day and was assigned to an Impact foot post for the 47th Precinct. His partner that day was PO Deck, he was dressed in uniform, and he was not assigned to a vehicle.*

Memo Book

PO Freeman's memo book is summarized as follows: 6:25p.m., one male stopped on the corner of 226th Street and White Plains Road, resisted arrest, arrested by PO Deck."

CCRB Testimony

PO Freeman was interviewed at the CCRB on April 13, 2010 (encl. 5J-M). PO Freeman provided testimony which was consistent with PO Deck's testimony with the exception of the following: "PO Deck smelled the styrofoam cup § 87(2)(b) was holding."

Witness Officer: PO GABRIEL RODRIGUEZ

- PO Rodriguez is a § 87(2)(b)
- On August 1, 2009, PO Rodriguez worked a tour of 5:30 p.m. until 2:05 a.m. the following day and was assigned to a solo foot post as impact for the 47th Precinct. He was dressed in uniform and was not assigned to a motor vehicle.

Memo Book

PO Rodriguez's memo book is summarized as follows: "6:25 p.m., one under, corner of East 226th Street and White Plains Road."

CCRB Testimony

PO Gabriel Rodriguez was interviewed at the CCRB on January 6, 2010 (encl. 5A-D). PO Rodriguez provided testimony which was entirely consistent with PO Deck's.

Medical Records

§ 87(2)(b)'s medical records from § 87(2)(b) Hospital indicate that the examination of § 87(2)(b) conducted on § 87(2)(b) yielded no evidence of fracture or other pathology to § 87(2)(b)'s ribs.

NYPD Document(s)

§ 87(2)(b)

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Criminal Court Complaint

- The criminal court complaint for this incident indicated that § 87(2)(b) was stopped by PO Deck in order to be issued a summons for a violation. § 87(2)(b) refused to present his identification and began to act disorderly, creating public alarm and causing a crowd to form. When PO Deck attempted to place § 87(2)(b) in handcuffs, § 87(2)(b) flailed his arms (encl. 7B-C).

Arrest Report

- The arrest report indicated that § 87(2)(b) was charged with Obstruction of Governmental Administration, Resisting Arrest and Disorderly Conduct for violent behavior (encl. 7D-E).

§ 87(2)(b)

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Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of March 26, 2010 with regard to the incident (encl. 8).

§ 87(2)(b)

Subject Officer(s) CCRB History

- PO Deck has been a member of the service for one year and there is one substantiated CCRB allegation of a stop against him. An NYPD disposition has not been made regarding this allegation (encl. 1B).
- PO Freeman has been a member of the service for one year and there are no substantiated CCRB allegations against him (encl. 1A).

Conclusion

Identification of Subject Officer(s)

PO Deck, PO Freeman and PO Rodriguez acknowledged interacting with § 87(2)(b)

Allegations Not Pleaded

§ 87(2)(b) alleged that during his apprehension officers used mild force against him, such as stepping on foot. This allegation against officers is not pleaded as the force was minor and incident to apprehending § 87(2)(b)

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: PO Joseph Deck questioned § 87(2)(b)

§ 87(2)(b) admitted to having a styrofoam cup in his hand but denied it contained alcohol. Both officers testified that it was this styrofoam cup coupled with the ongoing problem of alcohol being sold in styrofoam cups in this area that factored into PO Deck questioning § 87(2)(b). According to People v. De Bour, a member of service may conduct a common law inquiry of an individual given a founded suspicion that criminality is afoot (encl. I)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

§ 87(2)(b)

Allegation B – Force: PO Andrew Freeman used physical force against § 87(2)(b)

Allegation C – Force: PO Joseph Deck used physical force against § 87(2)(b)

§ 87(2)(b) alleged that PO Deck pushed him as he was attempting to hand PO Deck his identification. Subsequently, officers, including PO Freeman and PO Rodriguez, used force against § 87(2)(b). PO Freeman placed § 87(2)(b) in a headlock (which did not restrict his breathing) and then threw him to the ground. The other officers may also have assisted PO Freeman with pushing him to the ground. Officers then stepped on his back, his knee and his face. PO Deck later pushed § 87(2)(b)'s head into a patrol vehicle window.

PO Deck, PO Freeman and PO Rodriguez all denied using any force against § 87(2)(b)
§ 87(2)(g) § 87(2)(b) § 87(2)(b)
§ 87(2)(b)
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§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b).

Allegation D –Abuse of Authority: PO Joseph Deck did not obtain medical treatment for

§ 87(2)(b)
§ 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Team: 2

Investigator:	_____	Souad Moussawi	April 14, 2010
	Signature	Print	Date
Supervisor:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date